

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Implementation of the Child Safe Viewing Act;
Examination of Parental Control Technologies
for Video or Audio Programming

MB Docket No. 09-26



**REPLY TO COMMENTS OF
THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC)**

The Commission should take a disciplined approach in carrying out its duties under the *Child Safe Viewing Act of 2007* to inquire into the existence and availability of advanced blocking technologies and reporting on the same to Congress. The Commission should not exceed Congress's instructions by examining other sorts of technologies over which the Commission otherwise has no jurisdiction. Similarly, the Commission should carry out the inquiry and report as required, but not use the proceeding to hastily enact new regulations of innovative technologies. ALEC believes that private self-standards and widely available filtering and monitoring tools offer parents ample means of controlling what their children watch. ALEC supports the successful, ongoing deployment of these technological innovations. Government should encourage these developments rather than stifle them through new regulation.

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STATEMENT OF INTEREST

The American Legislative Exchange Council (ALEC) is the nation's largest nonpartisan, individual membership organization of state legislators. ALEC's mission is to promote Jeffersonian principles of limited government, federalism, free markets, and individual liberty. ALEC establishes public policies for modern communications and broadband through its Telecommunications and Information Technology Task Force. Official ALEC policies concerning modern technologies seek to preserve free-market principles, promote competitive federalism, uphold deregulation efforts, and keep the advanced technologies free from new burdensome regulations.

ALEC's policies concerning issues raised or implicated by the *Notice of Inquiry* are primarily contained in two official *Statements of Principle*. Through its *Statement of Principles on Online Privacy*, ALEC recognizes that the Internet has flourished due in large part to the unregulated environment in which it has developed. "Self-regulation, industry-driven standards, individual empowerment and a market environment generally promise greater future success than intrusive government regulation." As detailed in its statement, ALEC believes that in order to preserve online privacy that "[T]he private sector should lead," "[g]overnment should avoid undue restrictions on e-commerce," and that "[t]o the greatest extent possible, individuals should be directing their privacy choices."

Also, in its *Statement of Principles on the Internet and Electronic Commerce*, ALEC supports online self-governance and free speech. The statement affirms that “[v]oluntary codes of conduct, industry-driven standards and individual empowerment, together with a market environment generally hold greater future promise than does intrusive government regulation.” It likewise recognizes that “[n]ew electronic and/or digital technologies adequately enable individuals, families and schools to protect themselves and students from communications and materials they deem offensive or inappropriate.”

ANALYSIS

Through this Notice of Inquiry, the Commission follows its mandate from Congress in *the Child Safe Viewing Act of 2007*.¹ Congress directed the Commission to begin a proceeding within 90 days after the date of enactment to examine and report on “the existence of and availability of advanced blocking technologies that are compatible with various communications devices or platforms.”² Congress defined “advanced blocking technologies” as “technologies that can improve or enhance the ability of a parent to protect his or her child from any indecent or objectionable video or audio programming, as determined by such parent, that is transmitted through the use of wire, wireless or radio communications.”³

¹ See *Child Safe Viewing Act of 2007*, S. 602 P.L. 110-452, 122 Stat. 5025 (December 2, 2008).

² *Id.* at Sec. 2(a).

³ *Id.* at Sec. 2(d).

I. Threshold Jurisdictional Issues

ALEC believes the scope of this proceeding should be confined to its instructions by Congress and should not exceed its narrow delegation of authority.

A. The Commission's Inquiry in this Proceeding and its Report Should Properly Focus on Programming Generally Comparable with Television Broadcast Programming

In the *Notice*, the Commission seeks comment on how it should interpret the term “video programming,” which the *Child Safe Viewing Act* leaves undefined. The *Notice* references Section 602(20) of the *Communications Act*, which defines the term to mean “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.”⁴ ALEC believes that the Commission should rely upon this definition. The *Communications Act*'s definition matches the Commission's own jurisdiction. Lacking explicit authorization from Congress, it would be unseemly for Commission to expand the scope of its inquiry and report to include a wide variety of dissimilar video technologies that Commission does *not* have jurisdiction to regulate. Comments in this proceeding persuasively explain some of the key distinguishing characteristics of broadcast programming.⁵

⁴ *Notice of Inquiry, In the Matter of Implementation of the Child Safe Viewing Act; Examination of Parental Control Technologies for Video or Audio Programming*, MB Docket No. 09-26 (March 2, 2009) at para 8 (citing 47 U.S.C. Sec. 522(20)), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-14A1.pdf.

⁵ See, e.g., Comments of Microsoft Corp., MB Docket No. 09-26 (April 16, 2009) at 3-4, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213768.

B. The Commission Should Limit its Activities in this Proceeding to its Authorized Inquiry and Report, and Refrain from Imposing New Regulations

ALEC strongly recommends the Commission to closely adhere to its instructions from Congress by properly limiting its activities in this proceeding to the information gathering and reporting. The Notice conveys the Commission's general sense of its own limited role in this proceeding. The Commission is urged to maintain that approach in carrying out its duties.

It is important to emphasize that the Commission does *not* have authority to impose any new existing regulations in this proceeding. Nothing in the *Child Safe Viewers Act* or the Commission's ancillary jurisdiction gives it the authority to exercise regulatory powers. Other comments in this proceeding aptly emphasize this fact.⁶ The Commission should *not* regulate any of the technologies that are the subject of the present inquiry and future Report. The Commission has been commissioned to provide a report to Congress based on its findings from this proceeding. Once again, the *Notice* makes *no* suggestion that regulation is contemplated in this proceeding. ALEC urges the Commission to carry out its inquiry and reporting duties in a manner consistent with the *Notice*.

⁶ See, e.g., Comments of Adam Thierer, MB Docket No. 09-26 (April 16, 2009) at 143, *available at*: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213144; Comments of the Entertainment Software Association ("ESA"), MB Docket No. 09-26 (April 16, 2009) at 3-7, *available at*: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213631; Comments of Microsoft, at 3-4.

II. Government Should Pursue a Multi-Layered Approach to Child Viewing of Broadcast and Like Programming Emphasizing Industry Self-Standards and Encouraging Private Deployment of Monitoring Tools that Empower Parents

To the extent that the Commission directs its inquiry into online or other technologies it deems similar to broadcast programming, ALEC makes the following recommendations with respect to the roles government should and should not play in order to best ensure safe viewing experience for children.

A. Government Should Encourage the Private Sector's Continuing Development of Industry Self-Standards

ALEC believes that privately developed self-standards (or self-regulation) offers parents an important informational resource for better deciding what kind of content their children should be able to view. As ALEC's *Statement of Principles on Online Privacy* makes clear, "[s]elf-regulation, industry-driven standards, individual empowerment and a market environment generally promise greater future success than intrusive government regulation." Similarly, ALEC's *Statement of Principles on the Internet and Electronic Commerce* emphasizes the important role of "[v]oluntary codes of conduct, industry-driven standards and individual empowerment." It is ALEC's considered view that government should continue to encourage self-standards development by private entities rather than stifle such efforts through onerous new regulations.

ALEC believes it is important to recognize the breakthroughs in private self-standards for broadcast programming and other content that have been made to date. Comments in this proceeding aptly describe many of the self-standards that have been adopted by various industries that allow parents to make informed choices about what their children should view.⁷ Parents now have a variety of ratings systems that allow them to decide what their children should be able to view. It is the view of ALEC that self-standards efforts in the private competitive marketplace are working.

ALEC agrees with comments in this proceeding that recognize that government regulation could seriously undermine private industries' continuing development of self-imposed standards.⁸ ALEC believes that meaningful and effective self-standards require that government stay its hand from burdensome regulation.

⁷ See, e.g., Comments of CTIA – The Wireless Association®, MB Docket No. 09-26 (April 16, 2009) at 3-6, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213683; Comments of ESA, at 8-13; Comments of Microsoft, at 12-14; Joint Comments of the National Association of Broadcasters, National Cable & Telecommunications Association, and Motion Picture Association of America (“NAB/NCTA/MPAA”), MB Docket No. 09-26 (April 16, 2009) at 4-12, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213659; Comments of National Cable & Telecommunications Association (“NCTA”), MB Docket No. 09-26 (April 16, 2009), at 9-11, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213692; Comments of Verizon & Verizon Wireless, MB Docket No. 09-26 (April 16, 2009), at 2-3, 6-8, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213669.

⁸ See, e.g., Comments of AT&T, Inc., MB Docket No. 09-26 (April 16, 2009), at 10-11, http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213662; Joint Comments of NAB/NCTA/MPAA, at 19-20; Comments of Verizon, at 11-12.

B. Government Should Encourage the Private Sector to Develop and Make Available Tools that Empower Parents to Monitor Their Children's Viewing of Broadcast Programming

ALEC believes that privately developed monitoring and filtering tools and methods offers the best means for parents to opportunity to ensure they have the tools and abilities to customize their children's viewing experience according to their best interests. In particular, monitoring or filtering tools that incorporate industry self-standards or content rankings equip and empower parents to be the deciders or censors of what their children will view. ALEC's *Statement of Principles on the Internet and Electronic Commerce* recognizes that "[v]oluntary codes of conduct, industry-driven standards and individual empowerment, together with a market environment generally hold greater future promise than does intrusive government regulation." Through that statement ALEC also affirms that government should avoid imposing technical mandates for e-commerce that freeze into law a particular technology. Rather, government should foster private innovation to develop new tools that reflect the state of the art and carefully considered trade-offs. Accordingly, it is ALEC's view that parent consumers should decide what tools to use in ensuring their children's safe viewing experience, not government decision-makers. Parents are in the best position to look after their own children's best interest. Government should avoid interfering with the development of innovative new technologies that empower parents to decide what programming or content their children should view.

ALEC believes that in the breakthroughs in private self-standards for broadcast programming and other content that have been made to date. Blocking, filtering or monitoring tools are now widely made available to parents for little or no cost.⁹ It is the view of ALEC that private marketplace innovation and development of these tools has been proved a tremendous technological success. Comments in this proceeding detail a myriad of technologies across different platforms that allow parents to block, filter or monitor what their children are able to view. The tools now made available to parents are the reality that futurists could only speculate about in years past. One thing is undoubtedly true: the variety of cross-platform content safety tools now available to parent could never have come about through government planning. ALEC believes that the continuing development of these important tools should be further encouraged through a hands-off approach by government. It is therefore in agreement with previous comments that point out how government regulation of such technologies could potentially disrupt these ongoing innovative efforts.¹⁰

⁹ See, e.g., Comments of AT&T, at 5-9; Comments of Comcast Corporation, MB Docket No. 09-26 (April 16, 2009) at 2-5, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213656; Comments of Cox Communications, Inc., MB Docket No. 09-26 (April 16, 2009), at 5-7 and Appdx B, i-iv, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213697; Comments of CTIA, at 6-__ ; Comments of DIRECTV, Inc., MB Docket No. 09-26 (April 16, 2009) at 2-11, available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520213618; Comments of ESA, at 10; Comments of Microsoft, at 5-18; Comments of NCTA, at 7-13; Comments of Sprint-Nextel, at 2-3; Comments of Verizon, at 4-11.

¹⁰ See, e.g., Comments of AT&T at 4, 9-11; Comments of NAB/NCTA/MPAA, at 21-22; and Comments of Verizon, at 2.

III. Government Should Encourage a Multi-Layered Approach to Online Child Safety that Includes Strong Emphasis on Education

With respect to the online safety, ALEC supports a multifaceted approach. Private industry should be encouraged to continue making filtering and monitoring tools available to parents, law enforcement should be enabled to pursue online predators in accordance with carefully crafted laws, and—perhaps most importantly—children should receive education about how to best enjoy a safe online experience. Through its *Model Legislation to Pursue and Control Online Child Predators*, ALEC endorses state legislation authorizing state departments of education to develop model curricula for online safety. Virginia has led the way among states by adopting ,¹¹ educational curricula legislation. Other states followed with similar legislation or have developed online safety curricula based on their respective department of education’s existing administrative authority.

The importance of a multifaceted approach to online safety that includes parental empowerment and child education was recently emphasized by the Internet Safety Technical Task Force’s Final Report, “Enhancing Child Safety & Online Technologies.”¹² The Final Report, a product of a working group established by

¹¹ See “Guidelines for Internet Resources in Schools” (2nd ed.), Virginia Department of Education (October, 2007) (implementing VA Code § 22.1-70.2 (HB 58 [2006])), *available at*: <http://www.doe.virginia.gov/VDOE/Technology/OET/internet-safety-guidelines-resources.pdf>.

¹² See Internet Safety Technical Task Force, “Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Task Force to the Multi-State Working Group on Social Networking of State Attorneys General of the United States” (released January 14, 2009), *available at*: <http://cyber.law.harvard.edu/pubrelease/isttf/>. See also Seth Cooper, “Internet Safety: Important New Report Stresses Multi-Layered Approach,” *Inside ALEC* (March, 2009) at 16-17, *available at*: <http://www.alec.org/am/pdf/telecom/IAarticle.309.pdf>.

agreement between 49 State Attorneys General and NewsCorporation's MySpace, urged "a combination of technologies, in concert with parental oversight, education, social services, law enforcement, and sound policies by social networking sites and service providers" to assist in addressing specific problems faced by children online.¹³ Consistent with the views ALEC related above concerning technological mandates, the Final Report "cautions against overreliance on technology in isolation or on a single technological approach."¹⁴ ALEC recommends that the Commission take the findings of the Final Report into consideration in preparing its own Report to Congress. For the same reasons, ALEC agrees with other comments in this proceeding that emphasize the role of educational efforts to best ensure online safety for children.¹⁵

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *See, e.g.,* Comments of AT&T, at 9-10; Comments of Comcast at 7-9; Cox at 7-11; Comments of NCTA, at 3-6, 12-14; and Comments of Sprint-Nextel, at 3-5.

CONCLUSION

The Commission should carry out the inquiry and Report as required, but not unnecessarily overextend its inquiry or use the proceeding to hastily enact new regulations of innovative technologies. Private self-standards and widely available filtering and monitoring tools offer parents ample means of controlling what their children watch. Government should encourage the successful, ongoing deployment of these technological innovations these developments rather than stifle them through new regulation. ALEC looks forward to reviewing the Commission's Report upon its submission to Congress.

Respectfully submitted,

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